

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

GISSELLE RUIZ,
 individually and on behalf of all others
 similarly situated,

 Plaintiff,

 v.

 BALLY TOTAL FITNESS HOLDING CORP.,
 a Delaware Corporation
 HOLIDAY UNIVERSAL, INC.
 a Delaware Corporation

 Defendants

Civil Action No.
 05-11052-NMG

First Amended Class Action Complaint

Introduction

Plaintiff Gisselle Ruiz brings this class action against defendants Bally Total Fitness Holding Corporation and Holiday Universal, Inc. (collectively and referred to in the singular as “Bally’s”) to stop their use of illegal, unfair and deceptive contract provisions and to obtain restitution for all persons injured by their conduct in Massachusetts (“Class Members”).

Nature Of Action

1. Through its form health club membership agreements (“contracts”), Bally’s violates the express provisions of M.G.L. c. 93 § 78 *et seq.*, the Health Club Services Contracts Act (the “Act”), in two distinct ways:

a.) Bally’s contracts contain a substantial upfront “membership fee” (here \$1,565) as well as “monthly dues” of a nominal amount (here \$8). The initial contract term is one month, and is renewable on a month-to-

month basis contingent upon payment of the “monthly dues”. Bally’s finances the “membership fee” over a thirty-six month period, in violation of section 80 of the Act, which expressly prohibits financing that requires payments which would extend more than one month beyond the end of the contract term.

b.) Bally’s contracts require members to agree not to assert any claim against it “for the loss or theft of, or damage to, [their] personal property”. Section 78 of the Act, however, expressly prohibits “any provisions whereby the buyer agrees not to assert against the seller any claim or defense arising out of the health club services contract or buyer’s activities at the health club.” This provision of Bally’s contracts also violates the prohibition on waiver of consumer rights separately codified in M.G.L. c. 93, §101.

2. As Bally’s form contracts do not comply with the Act, they are, pursuant to M.G.L. c. 93 § 85, void and unenforceable as contrary to public policy.

3. Ms. Ruiz, individually and on behalf of all Class Members, seeks damages, injunctive and declaratory relief for Bally’s violations of M.G.L. c. 93, § 78, *et seq*, violations of M.G.L. c. 93A and c. 93, § 101, and the common law.

Jurisdiction

4. This Court has jurisdiction over the defendants pursuant to M.G.L. c. 223A, § 3. Additionally, this Court has jurisdiction over the defendants and over this matter generally pursuant to M.G.L. c. 212, § 4, M.G.L. c. 214, § 1 and M.G.L. c. 231A.

Venue

5. Venue is proper in this county because defendants do business here.

Parties

6. Gisselle Ruiz is a Massachusetts resident residing in Worcester County.

7. Bally’s Total Fitness Holding Corp. (“BTF Holding”), is a Delaware corporation with its principal place of business in Chicago, Illinois.

8. Holiday Universal, Inc. (“Holiday”), is a Delaware corporation. Holiday operates the Bally’s health club located at 203 Plain Street, Lowell, Massachusetts.

9. BTF Holding, operating under the name Bally Total Fitness, is one of the leading owners and operators of health and fitness clubs in Massachusetts, operating, together with its wholly-owned subsidiaries (including Holiday), clubs at approximately twelve locations state-wide.

10. BTF Holding drafts form health club agreements, or contracts, and provides them to its subsidiaries, including Holiday, with instructions to use them in the regular course of business.

Facts

11. On or about March 11, 2004, Ms. Ruiz entered into a Retail Installment Sale Agreement with Holiday, at its Lowell, Massachusetts location. A copy of the contract is attached hereto as Exhibit A.

12. Defendants prepared the printed form contract used in the above transaction, which form is identical in all material respects to that entered into with putative Class Members.

13. Under the express terms of the contract, Ms. Ruiz's membership was for an "initial term [of] one month", "renewable" on a month to month basis at her option upon payment of the monthly "membership fee" of \$8. The contract provides for Bally's "membership fee" of \$1,565.00, less a \$150 down payment, to be financed over a period of 36 months. The disclosed finance charge of \$344.68 was based upon an annual percentage rate of 14.75% per annum.

14. In 2004, Ms. Ruiz requested that Bally's cancel her membership and cancel her obligation to pay the balance of her "membership fee" for the remaining term of her financing agreement with Bally's. Bally's refused.

Applicable Law – And Bally’s Violations Thereof

15. Bally’s three year financing of the “membership fee” violates M.G.L. c. 93, § 80, which prohibits health clubs from selling contracts that require payments or financing by the buyer that extend more than one month beyond the expiration of the contract.

16. By selling such illegal contracts, Bally’s harms Ms. Ruiz and Class Members in at least two ways. First, by financing its substantial “membership fee” for nearly three years after the initial term of the contract, Bally’s effectively locks members into long-term contracts. Second, Bally’s use of such prohibited long-term financing imposes hundreds of dollars of illegal interest upon each of the putative Class Members.

17. Additionally, Section 7 of Bally’s form contract provides that “you agree that we will not be liable for loss or theft of, or damage to, the personal property of members or guests.”

18. This provision violates M.G.L. c. 93 § 78, which prohibits “any [contract] provisions whereby the buyer agrees not to assert against the seller ... any claim or defense arising out of the health club services contract or buyer’s activities at the health club.”

19. On April 15, 2005, Ms. Ruiz made demand upon Bally’s pursuant to M.G.L. c. 93A, § 9, on behalf of herself and all similarly situated individuals.

20. Bally’s responded to the M.G.L. c. 93A demand by offering prospective changes to the contract provisions at issue, denying any economic relief to class members, but offering restitution to Ms. Ruiz, individually.

Class Allegations

21. Ms. Ruiz brings this action on behalf of herself and all persons similarly situated, defined as all persons who:

- a) Purchased a health club services membership at a Bally's health club in Massachusetts;
- b) Executed a contract that required payments or financing by the buyer that extended more than one month beyond the expiration of the contract; and/or
- c) Executed a contract which included a provision by which the buyer agreed that Bally's would not be liable for loss or theft of, or damage to, the personal property of members or guests.

22. The class period for all counts is four years prior to the filing of this complaint.

23. The members of the putative class number in the tens of thousands and are widely dispersed geographically such that joinder is impracticable.

24. Common questions of law and fact exist as to all putative members of the class and predominate over questions affecting individual members of the class. Common questions include:

- a) Does Bally's contract provision wherein members finance their initiation fees over a 36 month period, when the initial duration of the contract is only for one month, violate M.G.L. c. 93 § 80?
- b) Does Bally's inclusion of Section 7 in its contracts requiring members to agree not to assert certain claims or defenses against Bally's violate M.G.L. c. 93 § 78?
- c) Does Bally's inclusion of a provision in its contracts requiring members to agree not to assert certain claims or defenses against Bally's violate G.L. c. 93 § 101?
- d) Does Bally's conduct as described in subparagraphs a-c violate G.L. c. 93A?
- e) Are class members entitled to damages for unjust enrichment and/or monies had and received?

25. Ms. Ruiz will fairly and adequately protect the interests of the class, her claims are typical of the claims of the class, and she has retained counsel competent and experienced in complex class action litigation.

26. A class action is superior to other available methods for fairly and efficiently adjudicating this controversy because, among other things, (a) joinder of all members of the class is impracticable, and (b) many members of the class cannot vindicate their rights by individual suits because their damages are small relative to the burden and expense of litigating individual actions.

Damages

27. Ms. Ruiz and Class Members were damaged by Bally's illegal conduct in that they:

- a) paid hundreds of dollars in illegal interest charges;
- b) paid and continue to pay Bally's for fees pursuant to illegal and unenforceable contracts; and/or
- c) were deprived by Bally's of the benefits and protections of the law and suffered a diminution in the value of their contracts thereby.

Causes Of Action

Count I

(Violations of M.G.L. c. 93 § 78, *et seq.*)

28. Ms. Ruiz incorporates by reference and re-alleges the foregoing allegations.

29. Bally's form contracts fail to conform to M.G.L. c. 93 § 78, *et seq.*, in that they contain financing terms which violate the express prohibitions of section 80 of the Act.

30. Bally's form contracts fail to conform to M.G.L. c. 93 § 78, *et seq.*, in that they contain a waiver clause which violates the express prohibitions of section 78 of the Act.

31. Pursuant to § 86 of the Act, the Class Members are entitled to recover damages and other relief due to Bally's violations.

Count II

(Unjust Enrichment)

32. Ms. Ruiz incorporates by reference and re-alleges the foregoing allegations.

33. Bally's has been wrongfully and unjustly enriched by its enforcement of illegal agreements.

34. In addition and in the alternative, Bally's has been wrongfully and unjustly enriched by its inclusion and use of illegal contract provisions.

35. It is against equity and good conscience to permit Bally's to retain the monies and benefits obtained as a result of the wrongful practices described above.

Count III

(Money Had And Received)

36. Ms. Ruiz incorporates by reference and re-alleges the foregoing allegations.

37. Bally's received money belonging to the Ms. Ruiz and the Class.

38. Bally's benefited from receipt of the money.

39. Under principles of equity and good conscience, Bally's should not be allowed to keep the money.

Count IV

(Declaratory Judgment)

40. Ms. Ruiz incorporates by reference and re-alleges the foregoing allegations.

41. Ms. Ruiz seeks a declaration of her rights and those of the class under the form contracts challenged, specifically a declaration that Bally's contracts violate M.G.L. c. 93 §§ 78, 80 and 101, as well as c. 93A.

42. Bally's continues to maintain that its agreements are not illegal and attempts to enforce those agreements to the detriment of its members.

43. An actual controversy exists as to whether Bally's agreements are illegal, as fully set forth within this Complaint, and as such declaratory relief is appropriate pursuant to M.G.L. c. 231A(1).

Count V
(Unfair and Deceptive Acts or Practices)

44. Ms. Ruiz incorporates by reference and realleges the foregoing allegations:

45. By engaging in the conduct complained of, Bally's engaged in unfair and deceptive acts and practices, in violation of M.G.L. c. 93A. As a result thereof, Ms. Ruiz and the class have been damaged in an amount to be determined at trial.

46. The unfair and deceptive acts include, but are not limited to:

a) misrepresenting Ms. Ruiz's and class members' statutory rights concerning the legal financing terms of their contracts;

b) requiring members to waive broad categories of claims against Bally's, in direct violation of M.G.L. c. 93 § 80, and c. 93 § 101;

c) failing to implement systems and procedures sufficient to insure that Bally's would abide by its obligations under applicable Massachusetts law;

d) failing to act in good faith and deal fairly in its interactions with Ms. Ruiz and other similarly situated individuals

e) engaging in other unfair and deceptive practices in the marketing and sale of membership contracts.

47. Bally's violations of c. 93, §78 et seq. and c. 93 § 101 are *per se* violations of c. 93A pursuant to c. 93, § 84.

48. Bally's conduct was willful or knowing within the meaning of M.G.L. c. 93A, §2.

49. Ms. Ruiz and class members have suffered damages by virtue of Bally's violations of c. 93A.

50. Bally's refusal to grant reasonable relief upon demand was in bad faith, with knowledge or reason to know that the acts or practices complained of violated c. 93A, §2.

Relief Requested

WHEREFORE, Ms. Ruiz, on behalf of herself and all others similarly situated, prays that the Court:

- a. Certify this case as a class action with the named Ms. Ruiz as class representative and her attorneys as counsel on behalf of the class described herein;
- b. Enter an order declaring Bally's form contracts in violation of M.G.L. c. 93, § 78, *et seq.*, c. 93A and c. 93, § 101 and allowing Class Members the right to rescind the contracts at their election;
- c. Enter an order enjoining Bally's from (1) including the illegal provisions identified above in future agreements and (2) relying upon such provisions to the detriment of Class Members;
- d. Enter judgment against Bally's for the actual damages sustained by Ms. Ruiz and Class Members by reason of the unlawful conduct alleged above or for statutory damages pursuant to c. 93A § 9, whichever is greater;
- e. Pursuant to M.G.L. c. 93, § 86 and/or c. 93A § 9, enter judgment against Bally's for a multiple of the actual damages sustained by Ms. Ruiz and Class Members; and
- f. Grant such other and further relief as the Court may deem just and appropriate in the circumstances.
- g. Enter an order awarding Ms. Ruiz and the class their attorneys fees and costs; and

Respectfully submitted,
Gisselle Ruiz
By her attorneys:

/s/ John Roddy
John Roddy, BBO #424240
Gary Klein, BBO #560769
Elizabeth Ryan, BBO #549632
Roddy, Klein & Ryan
727 Atlantic Avenue, 2d Floor
Boston, MA 02108
Telephone: (617) 357-5500, ext. 16
Fax: (617) 357-5030
roddy@roddykleinryan.com

JURY DEMAND

Ms. Ruiz demands a trial by jury.

/s/ John Roddy
John Roddy

Date: July 20, 2005

*** CUSTOMER COPY ***

WORCESTER
WWW.BALLYSTORE.COM

DATE: 3/11/2004 @ 08:01 PM REG: P014

TRANSNO: 37797745

ENTRD BY: E GOMEZ CREDIT 10:1 GOMEZ

New Contract

MEMBERID: 2601540478008

MEMBERNAME: GISELLE RUIZ

| QTY | DESCRIPTION | PRICE | SUBTOTAL |
|-----|-------------|-------|----------|
|-----|-------------|-------|----------|

Down Payment

| | | | |
|-----|-------------|--------|--------|
| 001 | SKU: DWNPMY | 150.00 | 150.00 |
|-----|-------------|--------|--------|

2601540478008: GISELLE RUIZ

\$50 OFF CASH PRICE ON PLA

| | | | |
|-----|---------------|------|------|
| 001 | SKU: Discount | 0.00 | 0.00 |
|-----|---------------|------|------|

DISCOUNT: \$0.00 PERCENT: 0.00%

U/A OFFER: \$5 OFF INITI

| | | | |
|-----|---------------|------|------|
| 001 | SKU: Discount | 0.00 | 0.00 |
|-----|---------------|------|------|

15% OFF CASH PRICE ON PLA

| | | | |
|-----|---------------|------|------|
| 001 | SKU: Discount | 0.00 | 0.00 |
|-----|---------------|------|------|

DISCOUNT: \$0.00 PERCENT: 0.00%

SUBTOTAL: 150.00

TAX: 0.00

TOTAL: 150.00

| PAYMENT REFERENCE | AMOUNT |
|-------------------|--------|
|-------------------|--------|

| | |
|--------------------|--------|
| VISA 008644;ONLINE | 150.00 |
|--------------------|--------|

2234;2004-03-11

Case 1:05-cv-11052-NMG Document 6-2 Filed 07/20/2005
RETAIL INSTALLMENT SALE AGREEMENT - SUBJECT TO STATE REGULATION

Page 2 of 8

Contract ID 2601540478008

BALLY TOTAL FITNESS® CLUBS

HOLIDAY UNIVERSAL, INC. ("Company") 203 PLAIN STREET, LOWELL, MA 01852



Buyer: (Please Print) GISSELLE RUIZ Buyer/Member: M Gender: F DOB: 10/03/1980

Address: 396 MAY ST # 1, WORCESTER, MA 01602
 Street Address Apt. # City/Borough State/Province Zip/Postal Code

Phone: (508) 753-3595 (508) 929-8041 E-Mail Address: _____
 Area Code Home Area Code Work Ext

Membership(s) for the following member(s):

TOTAL NO. OF MEMBERS: 1

| Member | Gender | DOB | Member | Gender | DOB |
|----------------------|----------|-------------------|--------|--------|-----|
| <u>GISSELLE RUIZ</u> | <u>F</u> | <u>10/03/1980</u> | | | |

Address: _____ Phone: _____
 (If different than Buyer's) Street Address Apt. # City/Borough State/Province Zip/Postal Code Area Code Phone

This Contract is a multi-page document and includes both sides of each page. Additional plans, goods or services may be purchased by Buyer from time to time by addendum to this Contract. The words "you" and "your" refer to Buyer or Member as applicable and "we", "us" and "our" refer to Company. **YOU MUST STILL MAKE PAYMENTS OWED TO COMPANY UNDER ANY OTHER CONTRACT.**

MEMBERSHIP PLAN selected is: ULTRA PERSONAL TRAINING. Plan features are described in Para. 22 on Page 4. Your membership is X renewable (initial term is one month) _____ non-renewable (term is _____ months). Your membership starts TODAY.

MEMBERSHIP PRICE consists of a membership fee and monthly dues plus applicable taxes. Amounts paid are not refundable except as described in this Contract. Where refunds are due, they will be calculated over 36 months. Unless otherwise notified, you will make payments to our service center, Bally Total Fitness Services, 12440 East Imperial Hwy., P.O. Box 1070, Norwalk, CA 90651-1070. You agree to pay any new, additional or increased taxes imposed on this Contract.

| | | |
|-----------------|---------------------|-------------------------------------|
| Itemization of | \$ <u>1900.00</u> | Membership Fee paid to us |
| Your Membership | - \$ <u>335.00</u> | Less: Credit (if applicable) |
| Fee: (for all | = \$ <u>1565.00</u> | Your Cash Price |
| memberships | - \$ <u>150.00</u> | Less: Downpayment (or Full Payment) |
| purchased) | = \$ <u>1415.00</u> | Amount Financed and owed to us |

PAYMENT INFORMATION. You agree to pay the Amount Financed plus Finance Charge as set forth below.

| ANNUAL PERCENTAGE RATE | FINANCE CHARGE | Amount Financed | Total of Payments | Total Sale Price |
|---|---|---|---|--|
| The cost of your credit as a yearly rate. | The dollar amount the credit will cost you. | The amount of credit provided to you or on your behalf. | The amount you will have paid after you have made all scheduled payments. | The total price of your purchase on credit, including your downpayment |
| <u>14.75</u> % | \$ <u>344.68</u> | \$ <u>1415.00</u> | \$ <u>1759.68</u> | of \$ <u>150.00</u> |
| | | | | \$ <u>1909.68</u> |

MONTHLY PAYMENT OF FINANCED MEMBERSHIP FEE.

| Number of Payments | Amount of Payment | When Payments are Due |
|--------------------|-------------------|---|
| <u>36</u> | \$ <u>48.88</u> | Your first payment will be due on <u>04/15/2004</u> and on the same day of each month thereafter. |

Late Charge: You will be charged \$5.00 or 5% of the amount in default, whichever is less, if payment is not made within 15 days after due.

Prepayment: If you prepay, you may be entitled to a refund of part of the Finance Charge.

You can refer to Pages 2 and 4 of this Contract for any additional information about prepayment refunds, non-payment and default.

MONTHLY DUES. To maintain your membership privileges, you must pay monthly dues beginning 04/15/2004, as set out below (plus applicable taxes, if any). If club of enrollment is not yet open, then monthly dues begin on the opening date. All monthly dues are subject to the terms and increases described in Paragraph 20 on Page 4.

SUMMARY OF TOTAL MONTHLY PAYMENTS

Your monthly dues along with membership fee payment and taxes are as follows:

| MONTHS | MONTHLY MEMBERSHIP FEE PAYMENT (INCLUDES FINANCE CHARGE) | MONTHLY DUES | TAXES ON MO. DUES | TOTAL MONTHLY PAYMENT |
|------------------|---|----------------|----------------------|--------------------------|
| <u>1 - 36</u> | \$ <u>48.88</u> | \$ <u>8.00</u> | \$ <u>0.00</u> | \$ <u>56.88</u> |
| <u>N/A - N/A</u> | \$ <u>N/A</u> | \$ <u>N/A</u> | \$ <u>N/A</u> | \$ <u>N/A</u> |
| <u>N/A - N/A</u> | \$ <u>N/A</u> | \$ <u>N/A</u> | \$ <u>N/A</u> | \$ <u>N/A</u> |

Thereafter, your dues will be \$ 12.00 plus tax, where applicable, per month, subject to increases described in Paragraph 20 on Page 4; however, if you have made any of your membership fee payments without utilizing the Automatic Payment Plan, these dues will be \$ 17.00 plus tax, where applicable, per month subject to increases described in Paragraph 20.

THIS CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES

1. **NOTICE.** ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

2. **DEFAULT.** You will be in Default if you breach any of this Contract's terms and conditions or if you fail to pay any installment within 20 days after the date when such installment is due. If you are in Default, your membership privileges may be denied. Acceptance of any payment after Default or denial of any membership privileges will not release Buyer from any obligations under this Contract. After the scheduled end of your payments under this Contract, you agree to pay interest at the Annual Percentage Rate stated on the front of this Contract on that part of the Amount Financed that you still owe. We may get a court judgment against you for the amount you still owe and you agree to pay any court costs and reasonable attorney's fees, where permitted, incurred in collecting amounts owed under this Contract, as determined by a court. Any judgment will bear interest at the highest rate allowed by law.

3. **OBLIGATIONS ABSOLUTE.** Other than in the event of permitted cancellations described below, Buyer shall not be excused from the obligation to make any payment in accordance with this Contract, and Buyer may not reduce the amount of any payment for any reason including Member's failure to use any club. Buyer agrees to pay a late charge in the amount disclosed on the front of this Contract for any payment not made within the indicated time period. Payments are applied first to any past due obligations on prior contracts, then to fees or charges assessed, if any, and then to dues and lastly membership fees in the order in which they are scheduled to be made; provided, however, that late charges will not be assessed if the only delinquency is attributable to a late charge assessed on a prior payment.

4. **ASSIGNMENT.** This Contract may be assigned by us and, if assigned, the term "Company" will also mean the company to which this Contract is assigned. If this Contract is assigned, the assignee shall have all our rights and powers under this Contract. In the event of assignment, we reserve our rights to assert any defenses we have or may have under this Contract. Memberships are not transferable unless otherwise provided in Paragraph 22 on Page 4. If this membership is not transferable, neither Buyer nor Member may sell, assign, or transfer this Contract, his membership card or membership and any such attempted sale, assignment or transfer shall be null and void.

5. **CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR FURTHER OBLIGATION BY CAUSING A WRITTEN NOTICE OF YOUR CANCELLATION TO BE DELIVERED IN PERSON OR POSTMARKED BY CERTIFIED OR REGISTERED UNITED STATES MAIL WITHIN THREE (3) BUSINESS DAYS OF THE DATE OF THIS CONTRACT OR THE DATE OF YOUR RECEIPT TO THE ADDRESS SPECIFIED IN THIS CONTRACT.** To cancel, send a written notice of cancellation by certified or registered United States mail or deliver it in person to us in care of Bally Total Fitness Services, 12440 East Imperial Hwy., Suite 300, Norwalk, CA 90650, ATTN: Cancellation Department. Such notice shall be accompanied by the Contract forms, membership cards and any other documents or evidence of membership previously delivered to Buyer or Member.

6. **ADDITIONAL RIGHTS TO CANCELLATION.** You or your estate may cancel this Contract for any of the following reasons: if upon a doctor's order, you cannot physically or medically receive the services because of significant physical or medical disability for a period in excess of three months; in case of your death; if the health club services to be provided under this Contract are not available because the seller fails to open a planned health club or location, permanently discontinues operation of a club or location, or substantially changes the operation of a club or location; if you move either your residence or your place of employment more than twenty-five miles from any club operated by the Seller or a substantially similar club which will accept the Seller's obligation under the Contract. Following cancellation, we may retain the portion of the total Contract price representing the amount of time that services or facilities were used prior to cancellation. We may demand the reasonable cost of goods and services which you have consumed or wish to retain after cancellation. Refunds of the membership fee are prorated over the number of months indicated in the Membership Price section on Page 1. Monthly dues for periods after cancellation will be refunded. Buyer remains obligated for payments for other Members not entitled to cancel under this paragraph.

To cancel for any of the reasons set forth in this Paragraph 6, send to us at Bally Total Fitness Services, 12440 East Imperial Hwy., P.O. Box 1080, Norwalk, CA 90651-1080 a written notice of cancellation with the Contract forms, membership cards, and any other documents or evidence of membership previously delivered to Buyer or Member.

To cancel for a change of permanent residence, also send to us any of the following items as proof of Member's new permanent residence: a current and valid lease, a utility bill, a bank statement or credit card bill, a yellow change of address label indicating mail was forwarded to your new address by the post office, or Member's new driver's license with issue date.

To cancel for death or disability, also send to us proof of death or a written certification of such disability by a doctor licensed under this State which includes the following information: diagnosis, extent of disability, date of onset and estimated duration of disability. Your cancellation will be effective upon the date of death or onset of disability. Member agrees that we may verify Member's disability directly with Member's physician and Member consents to the release of any medical information to us related to Member's disability.

A **CANCELLATION ACKNOWLEDGEMENT** will be sent, or additional documents requested, within 10 business days after we receive your written cancellation notice pursuant to any of the above Paragraphs 5 and 6.

7. (reserved)

8. **VALUABLES AND PERSONAL PROPERTY.** We urge you not to bring valuables into the Club. You agree that we will not be liable for the loss or theft of, or damage to, the personal property of members or guests.

9. **RESERVATION OF RIGHTS.** We reserve the right at any time to alter the hours of operation, and the right to amend the cost of, add, modify and/or eliminate any program, facility, activity, class or service of any club, in our sole discretion. **Classes and equipment are available subject to demand and may be crowded at peak hours or may be discontinued or times changed if demand fluctuates.**

10. **USE OF FACILITIES AND PREMISES.** You (Buyer, each Member and all guests) agree that you are engaging in physical exercise and activity and using the club facilities and premises, which could cause injury to you. This includes, without limitation, your use of the locker room, pool, whirlpool, sauna, steamroom, parking area, sidewalk or any equipment in the club and your participation in any activity, class, program or instruction. **You agree that you are voluntarily participating in these activities and using these club facilities and premises. You acknowledge that you have carefully read this paragraph and fully understand it.**

11. **MEMBER'S RESPONSIBILITY AS TO USE OF CLUB.** You (Buyer, each Member and all guests) should consult with your physician before using our services and clubs. You understand and acknowledge that we have no expertise in diagnosing, examining or treating any medical condition. You agree you will not use the clubs with any medical condition, including open cuts, abrasions, sores, infections, maladies or inability to maintain personal hygiene, if such condition poses a direct threat to the health or safety of yourself or others, and agree you will use the clubs in accordance with all applicable public health requirements. It is your responsibility to consult with your physician to determine if any of these medical conditions exists and, if so, whether such condition poses a direct threat to the health or safety of yourself or others. The club reserves the right, however, to make the final determination in this regard.

12. **MEMBERSHIP RULES AND REGULATIONS.** You agree to follow all rules and regulations now in force or in the future adopted by us, or our affiliated clubs, including, but not limited to, rules and regulations with regard to hours of operation, use of equipment, services, and club premises, personal hygiene and attire. We reserve the right to revoke or suspend your membership, without refund, if you or your guest fail to follow any rules and regulations, for reasons of nuisance, disturbance of other members, moral turpitude or fraud, or if we determine that your actions may endanger yourself or other persons. If your membership is suspended, your obligations to make payments under this Contract continue as scheduled. It is prohibited for any Member or guest to conduct, purchase or subscribe to any commercial business or activity or solicit any business competitive with that of the club (including personal trainer services) at any club without our prior, express, written consent. Member agrees to pay to us any revenues received by Member or Member's guest in violation of this policy and reasonable attorney's fees, where permitted, and court costs incurred in that regard.

The terms of this Contract are contained on more than one page.

This is Page 2 of 4 of your Contract. Additional paragraphs continue on Page 4 of 4.

Contract ID 2601540478008



Automatic Payment Plan. You agree to make payments of your membership fee, monthly dues, all other charges permitted under this Contract and all applicable taxes through the Automatic Payment Plan. The processing of your first payment made on the Automatic Payment Plan may be delayed up to seven days. If all your membership fee payments are made through our Automatic Payment Plan, the reduced monthly dues rates stated on Page 1 in the paragraph included in the section titled SUMMARY OF TOTAL MONTHLY PAYMENTS will apply. If you cannot or do not continue to make your membership fee payments through the Automatic Payment Plan, monthly dues will increase to the rates stated in that paragraph. You affirm that you are an authorized signatory of the account specified below. See Paragraph 21 on Page 4 for cancellation and other important information regarding the Automatic Payment Plan.

Buyer's Signature X

PLEASE ATTACH VOIDED CREDIT CARD IMPRINT, PREPRINTED CHECK OR PREPRINTED DEPOSIT SLIP AS APPLICABLE.

| | | | |
|------|--|---|--------------------------|
| CLUB | Charge credit card: <u>Visa</u> | Credit Card No. <u>XXXXXXXXXXXX2234</u> | Exp. Date <u>01/2008</u> |
| USE | Withdraw from Bank Account No.: _____ (____ checking/____ savings) | | |
| ONLY | Bank Name: _____ | Routing & Transit No.: _____ | |

| | | | | | |
|---|-------------|---|---|---|--|
| PREVIOUS MEMBERSHIP INFORMATION | | U/R/M | PREVIOUS MEMBERSHIP NO. | RECEIPT NO. | MONEY IN OFFICE |
| CURRENT MEMBER INFORMATION FOR ADD-ON | | FAMILY MEMBER ACCOUNT NO. | | RELATIONSHIP TO CURRENT MEMBER | |
| FAMILY MEMBER NAME | | FAMILY MEMBER'S MEMBERSHIP TYPE | | | |
| BUYER'S CREDIT INFORMATION | | SOCIAL SECURITY NUMBER <u>XXX-XX-7877</u> | | VERIFIED: ____ DOB ____ SIGNATURE ____ ADDRESS | |
| ALTERNATIVE ID TYPE | | ALTERNATIVE ID # | | ID VERIFIED BY (EMPLOYEE NAME) | |
| DRIVER'S LICENSE # | STATE/PROV. | E/S | E-EMPLOYED BY/S-STUDENT AT <u>None</u> | | |
| EMERGENCY INFORMATION | | FIRST NAME <u>RICCI</u> | LAST NAME <u>SCOT</u> | AREA CODE | PHONE <u>(917) 597-4796</u> |
| SPONSOR INFORMATION | | HOW DID YOU HEAR ABOUT US? <input checked="" type="checkbox"/> TI ____ BR ____ LB ____ WWW ____ WI ____ GST ____ OTH | | | |
| REFERRAL CREDIT GIVEN ONLY AT TIME OF ENROLLMENT | | SPONSOR'S ACCOUNT NO. | | DATE SPONSOR ENROLLED | |
| SPONSOR'S NAME <u>None</u> | | CORP. SALES - COMPANY NAME | | ID # | PROGRAM TYPE ____ CP ____ CS ____ OE ____ FP ____ HP ____ BK ____ SP ____ EC ____ CF ____ CT ____ OS ____ CE |

If the club you have contracted to use is not presently open, the anticipated opening date is N/A

NOTICE TO BUYER: 1. DO NOT SIGN THIS CONTRACT IF ANY OF THE SPACES INTENDED FOR THE AGREED TERMS TO THE EXTENT OF THEN AVAILABLE INFORMATION ARE LEFT BLANK.
2. YOU ARE ENTITLED TO AN EXACT COPY OF THIS CONTRACT AT THE TIME YOU SIGN IT.
3. YOU MAY AT ANY TIME PAY OFF THE FULL UNPAID BALANCE DUE UNDER THIS CONTRACT AND IN SO DOING YOU MAY RECEIVE A PARTIAL REBATE OF THE FINANCE AND INSURANCE CHARGES.

HOLIDAY UNIVERSAL, INC.

BY:

Employee Signature

chris haskell

Employee Name

800999

Employee No.

YOU ACKNOWLEDGE RECEIPT OF A FULLY COMPLETED COPY OF THIS CONTRACT EXECUTED BY BOTH YOU AND US AND OF A COPY OF THE RULES AND REGULATIONS.

Buyer, individually and as agent for Member(s)

(Seal)

Date of Contract: 03/11/2004Time of Signing: 8:01 P.M.

A.M./P.M.

Orientation: _____

535 LINCOLN ST SHOPPING CWORCESTER, MA 01605

Location of club that Member has joined (club of enrollment)

IF YOU HAVE ANY QUESTIONS REGARDING THIS CONTRACT, PLEASE CONTACT MEMBER SERVICES AT (562) 484-2980.

Buyer cannot cancel Contract at club of enrollment. Club personnel have no authority to cancel Contracts.

CTMAB1E4

The terms of this Contract are contained on more than one page. This is Page 3 of 4 of your Contract.

(BUYER COPY)

13. DISHONORED CHECK/AUTOMATIC PAYMENT CHARGES. Where permitted by law, Buyer agrees to pay a \$10.00 fee or other permitted maximum amount for (a) any dishonored or returned check or other item, and (b) any Automatic Payment authorized by Buyer which is rejected or not honored by Buyer's bank or credit card issuer for any reason, along with any costs and expenses incurred in connection with collection of such dishonored, returned or rejected check, other than an Automatic Payment.

14. LOST MEMBERSHIP CARD. We may require Member to sign an affidavit and pay a \$10.00 service fee before we issue a replacement card.

15. EXCLUSIVE AGREEMENT. This Contract and all rules and regulations of the Company, as revised from time to time, constitute the entire and exclusive agreement between the parties, and supercede all prior promises, representations, understandings and/or agreements relating to this membership purchase. This Contract may be modified only by an instrument in writing; however, we or any assignee of this Contract are authorized to correct patent errors in this Contract (and in other related documents) and Buyer may verbally authorize payment of the outstanding balance of the membership fee by the Automatic Payment Plan. At our option, this Contract shall be null and void if it is not completed by our employee in accordance with our then current pricing and payment programs. No change to any printed term in this Contract shall be valid.

16. GOVERNING LAW. This Contract is governed by the laws of the state in which it is signed and, to the extent preempted, by federal law.

17. MISCELLANEOUS. The provisions of this Contract are severable and if any provision is determined to be illegal or unenforceable the remaining provisions and any partially enforceable provision shall nevertheless be enforceable unless otherwise prohibited by state law. Our failure to enforce any remedy or provision of this Contract shall not be construed as a waiver of such remedy or provision including, but not limited to, yearly increases in monthly dues permitted pursuant to Paragraph 20 below, which can be imposed cumulatively at any time.

18. INDEPENDENT CONTRACTORS. From time to time we may make available to Members and their guests the services of independent contractors. We do not warrant or guarantee the quality of these services and do not guarantee that these services will remain available to Members or their guests for any period of time.

19. PREPAYMENT. You can prepay the full amount of the membership fee at any time without incurring any additional charge for prepayment. If you pay in full within 30 days after you sign this Contract, we'll give you a full credit for your finance charge. After 30 days, we'll credit the unearned part of your finance charge, figured by the actuarial method or another method which is at least as favorable to you as the actuarial method (based on the original schedule of payments). However, we won't make any refunds of less than \$1.00.

20. MONTHLY DUES. Monthly dues charges will continue to be due each month regardless of your use of the club until you notify us in writing that you wish to cancel this Contract. Such notice must be accompanied by return of Member's membership card and any other evidence of membership provided Member and must be sent to us in care of BALLY TOTAL FITNESS SERVICES, 12440 EAST IMPERIAL HWY., P.O. BOX 1080, NORWALK, CA 90651-1080. Regardless of such cancellation, any outstanding balance of the membership fee will remain due and payable in accordance with this Contract. We may apply dues payments to pay any other sums which are past due. If you fail to pay any monthly dues payment within 20 days after the date such payment is due, your membership privileges may be cancelled and you may have to reapply for membership at the prices we are then charging new members or, if available, pay a reinstatement fee which may include unpaid dues to date. To cover our increasing costs in providing services, monthly dues may be increased beginning one (1) year after the same number of months as indicated in the Membership Price section on Page 1 and in each succeeding year. The amount of the monthly increase for each such renewal year will be \$2.00, 10% or the increase from year to year in the Consumer Price Index in effect on each renewal year, whichever is greatest, plus any applicable taxes. If the Company does not impose an increase in monthly dues as described above, the Company does not waive any rights, and specifically reserves the right to impose the increase at any future date. Therefore, an increase in monthly dues may be cumulative, that is based on a number of years. For purposes of calculating monthly dues increases, "Consumer Price Index" means the Consumer Price Index - All Urban Consumers All Items, U.S. City Average (1982-84 = 100) published by the Bureau of Labor Statistics of the U.S. Department of Labor or, if not published, a substitute index selected by us and prepared by an appropriate entity.

21. AUTOMATIC PAYMENT PLAN. If you have elected the Automatic Payment Plan, you are authorizing us, or our agents, to make charges or withdrawals to the accounts you have specified for membership fee (until paid in full), monthly dues and tax payments and all other charges permitted under this Contract. Additionally, you are authorizing us to increase our charges/withdrawals for monthly dues and taxes in accordance with this Contract. You understand that you are entitled to notice of all varying charges/withdrawals and you waive your right to receive prior notice for increased charges/withdrawals made in accordance with this Contract. If you notify us that you choose to pre-pay the outstanding balance of your membership fee, we may charge or withdraw from your account for the amount of such balance. If for any reason you do not continue to pay your membership fee through an Automatic Payment Plan, you agree to make payments through our regular payment plan and if you received reduced rate monthly dues, it will be revoked and regularly scheduled monthly dues will again apply. **Your Automatic Payment Plan election will remain in effect unless and until all amounts due under this Contract are paid in full or until you give written notice that you revoke this authorization to us at the address noted in Paragraph 6 on Page 2 or to your bank. You agree that we must have a reasonable opportunity to act on that notice.**

22. MEMBERSHIP PLANS. The following membership plans may be available:

a. **Premier Plus** - Provides Member with the use of all local and North American Bally Total Fitness® clubs (excluding all Bally Sports Clubs™, Pinnacle Fitness®, Gorilla Sports™, Crunch Fitness™, Holmes Place™, Sports Clubs of Canada® and BFIT® locations and the Executive Club in Bloomfield Hills, MI, memberships for which can be purchased at those clubs). Other clubs may be built, acquired, reopened, or converted after your Date of Contract which may be excluded from this membership at our sole discretion. When and where available, also provides unlimited free racquetball, child care services for a fee and a 5-day priority reservation privilege. Also provides for the privilege, of original Member only, to transfer the membership once. Transfer of the membership is allowed only after the membership fee has been paid in full, provided Member is in good standing and pays a transfer fee of \$100 and the transferee complies with any other transfer requirements.

b. **Premier** - Provides Member with the same benefits as the Premier Plus membership plan, except the membership is not transferable.

c. **Platinum** - Provides Member with the use of all local Bally Total Fitness® clubs (excluding all Bally Sports Clubs™, Pinnacle Fitness®, Gorilla Sports™, Crunch Fitness™, Holmes Place™, Sports Clubs of Canada® and BFIT® locations and the Executive Club in Bloomfield Hills, MI, memberships for which can be purchased at those clubs). Other clubs may be built, acquired, reopened, or converted after your Date of Contract which may be excluded from this membership at our sole discretion. Nationwide use of clubs is not included. When and where available, racquetball and child care services may be purchased for an additional fee. If you move, we will transfer your membership to a comparable local club available for your membership type and you will remain responsible for your membership fee under your Contract unless you qualify for a relocation cancellation. **See Additional Rights to Cancellation on Page 2 for additional information.**

d. **Fitness** - Provides Member only with the use of the club of enrollment. This membership is renewable and does not allow Member to purchase racquetball or child care. If you move, we will transfer your membership to a comparable local club available for your membership type and you will remain responsible for your membership fee under your Contract unless you qualify for a relocation cancellation. **See Additional Rights to Cancellation on Page 2 for additional information.**

e. **Limited** - Same as Fitness membership plan, except the membership is not renewable.

f. **Special** - From time to time, we may offer special memberships for promotional and other purposes. The terms of these memberships may vary. Please check with us for a description of special memberships currently offered, if any.

© 2004 Bally Total Fitness Corporation

THIS SPACE INTENTIONALLY LEFT BLANK

Buyer Name: GISSELLE RUIZContract ID 2601540478008Date of Contract: 03/11/2004**BALLY TOTAL FITNESS® GUARANTEE**

**WE ARE SO SURE YOU WILL LOOK BETTER AND FEEL BETTER IN
30 DAYS WE'LL GIVE YOUR MONEY BACK IF YOU DON'T!**

Member and Buyer understand and acknowledge that qualification for this Guarantee Program requires that Member uses the Bally Total Fitness® or Bally Sports Clubs™ (depending on Member's membership) a minimum of twelve (12) days during the first 30-day period after the "Date of Contract" listed above or the Grand Opening date of the club of enrollment, whichever is later. On a given day, only one (1) visit is counted even if Member uses the Club(s) more than once in a single day. Each visit must be recorded at the front desk of the applicable club by swiping Member's membership card. If, after the end of this 30-day period, Member believes he/she does not look and feel better, Member can request, in writing, that Bally Total Fitness® provide Buyer with a full refund of all membership fee and dues (if any) paid to Bally Total Fitness® to date for Member's membership and cancel Member's membership, in accordance with the Official Rules set out on the back of this Guarantee.

Buyer Signature (individually and as agent for Member)

Date:

Club Representative/Employee No.

Date:

Member Number

Member Name

| | |
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We thank you for choosing Bally Total Fitness® as your fitness solution!

BALLY TOTAL FITNESS® GUARANTEE PROGRAM OFFICIAL RULES

1. This Bally Total Fitness® Guarantee Program ("Program") is available one time only to a Bally Total Fitness® ("BTF") and Bally Sports Clubs™ ("BSC") Member purchasing a qualifying membership at a participating Club on or after November 1, 2003.
2. In order to qualify for the Program, the Member must demonstrate that he or she has used a Bally Sports Clubs™ or Bally Total Fitness® location ("Club") (depending upon type of membership purchased) a minimum of twelve (12) separate and different days during the period beginning on the date the membership contract for Member's membership with BTF or BSC is signed or the Grand Opening date of the club of enrollment, whichever is later, and ending thirty (30) days thereafter, and must be dissatisfied with the result of such Club visits. On a given day, only one (1) Club visit will be counted, no matter how many Clubs are actually visited and/or used on that day. Members are responsible for swiping their membership card in the card reader at the Club. In addition, the dissatisfied Member must, **WITHIN FORTY (40) DAYS AFTER** the "Date of Contract" listed on the front or the Grand Opening date of the club of enrollment, whichever is later, give BTF written notice stating that (a) the Member is dissatisfied with the results of his or her Club usage and (b) the Member desires that Buyer receive a full refund of all monies paid to BTF for Member's membership. This written notice must be delivered to Bally Total Fitness Services, 12440 East Imperial Highway, Suite 300, Norwalk, CA 90650, Attn: Cancellation Department. Such refunds will be made to the "Buyer" listed on the membership contract.
3. Member's membership contract must be current and the membership in good standing when the written cancellation notice is properly delivered to BTF, in order to receive the refund. Termination of membership under the Member's membership agreement prior to the delivery of such written notice voids this offer.
4. Member is solely responsible for BTF's timely receipt of the written notice. BTF and its affiliates, subsidiaries, advertising and production agencies are not responsible for lost, misdirected, undeliverable, or delayed mail. Illegible written notices will be deemed void.
5. Family add-on Memberships must be purchased at the same time as the original membership for both Buyer and family add-on Member to participate in this Program. A family add-on Member who requests the refund must have the minimum number of Club visits to qualify and must comply with all other terms and conditions of this Program.
6. BTF shall make the final determination as to all aspects of the Program and the satisfaction of its Official Rules by Member and Buyer. By participating in this Program, participants agree to and accept these Official Rules and BTF's decisions. This Program cannot be combined with any other promotion. BTF has the right to terminate the Program with respect to prospective members, at any time.
7. Any dispute or inquiry regarding the issuance of refunds must be made in writing, postmarked no later than one hundred eighty (180) days after Member's Date of Contract or the Grand Opening date of the club of enrollment, whichever is later, and mailed to the following address:

"Bally Total Fitness Guarantee Program"
c/o Bally Total Fitness Services
12440 East Imperial Highway
Suite 300
Norwalk, California 90650

Any notices of dispute or inquiry postmarked after such date will be considered null and void.

Buyer Name: GISSELLE RUIZContract ID 2601540478008**ADDENDUM TO MEMBERSHIP CONTRACT**

This is an Addendum to Paragraph 22 of your Retail Installment Contract dated as shown below ("Contract"). When this Addendum is signed by you and by us, it will be incorporated into, and become part of, your Contract. Except as modified by this Addendum, all terms and conditions of your Contract shall remain in full force and effect. To the extent that any specific provision of this Addendum conflicts with any provision of your Contract, the provisions contained in this Addendum shall control.

Ultra Personal Training Membership - Provides Member with use of all local and North American Bally Total Fitness® clubs (excludes all Bally Sports Clubs™, Pinnacle Fitness®, Gorilla Sports™, Crunch Fitness™, Holmes Place™, Sports Clubs of Canada® and BFIT® locations, and the Executive Club in Bloomfield Hills, Michigan, memberships for which can be purchased at those clubs). Other clubs may be built, reopened, converted or acquired after your Date of Contract which may be excluded from this membership at Seller's sole discretion. When and where available, also provides unlimited free racquetball, child care services for a fee and a five (5)-day priority reservation privilege. Also provides for the privilege, of original Member only, to transfer the membership once. Transfer of the membership is allowed only after the membership fee has been paid in full, provided Member is in good standing and pays a transfer fee of \$100 and transferee complies with any other transfer requirements.

Also allows Member to receive one Bally Nutrition Starter Pack consisting of: High Potency Multi-Vitamin PLUS, a Variety Pack of Nutrition and 6 cans of the Meal Replacement Shake.

Also provides Member with twelve (12) one-on-one 60-minute personal training sessions (including a new member first workout) and the Bally Weight Loss and Weight Management Program described below.

The Bally Weight Loss and Weight Management Program includes one (1) metabolic assessment, meal planning and tracking (using either a DietMaster Client CD or the Food Tracker Guide), Client Nutrition Guide and a Pocket Food Guide.

Member may add additional members at point of sale ("Add-On Members") to this Contract, which provides the Add-On Member(s) with the same privileges as the Ultra Personal Training Membership **BUT DOES NOT INCLUDE** any individual personal training sessions, the Bally Nutrition Starter Pack or the Bally Weight Loss and Weight Management Program. Member may invite one Add-On Member to participate with Member in any or all personal training sessions included in the Member's Ultra Personal Training Membership.

By: _____
Employee Signature

Buyer's Signature, individually and as agent for Member(s)

Date: 03/11/2004